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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,262	02/18/2000	Jay S. Walker	17200-020CT3	8998
54205 7590 05/29/2008 CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
ZURITA, JAMES H				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/507,262

Applicant(s)

WALKER ET AL.

Examiner

JAMES ZURITA

Art Unit

3625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179, 181 and 182 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 98-111,113-125,127-137,139-150,152-163,165,167-177,179,181 and 182.

DETAILED ACTION

On 14 May 2007, applicant again requested continued examination.

On 17 August 2007, the Examiner issued a non-final rejection of pending claims.

Response to Amendment

Applicant's submission of 19 February 2008 has been entered.

Applicant amended independent claims 98, 113, 127, 139, 152, 168 and 182.

Claims 1-97, 112, 126, 138, 151, 164, 166, 178 and 180 have been cancelled during prosecution.

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 are pending and will be examined.

Claims 152 and 168 are drawn to methods. Claims 98, 113, 127, 139 and 182 are drawn to systems.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boisseau in view of Chung (US 5,644,721).

As per claim 98, drawn to a system, Boisseau discloses systems and methods for using a computer to process the sale of travel services. Boisseau discloses:

Server(s) providing web page(s) accessible by customers. See, for example, references to an airline's site on the World Wide Web, page 2, paragraph 11, "Airlines some time ago discovered that the Internet...Airlines... use their sites on the World Wide Web to provide thousands of pages..."

Storage device(s) storing program(s), including programs that provide travel information to customers, as in page 2, paragraph 2, "The latest wrinkle..."

Processor(s) (inherent in computers) in communication with the storage device and which obtain stored flight and seat inventory information and display the information to customers using server(s). The processors also:

receive conditional purchase offer (bids) including an offer price from a customer utilizing a web page for purchasing travel services. See, for example, references to submitting a bid for travel services such as airline seats, as in Abstract, "The airline received 14,760 bids..."

receive a payment identifier specifying a financial account for use ["...customers pay with a credit card..."] in providing guaranteed payment [in that payments are charged to a customer's credit card] for said travel services if said conditional purchase offer is accepted;

comparing the conditional purchase offer with

seller inventory (see, for example, references to seats and selling inventory that would otherwise go empty, such as first-class seats, "An often heard analogy... On average, nearly two-thirds of an airline's seats go empty...") and

seller pricing information (see Abstract, for example, for references to full price for first class seats, \$475 paid + \$3700 saved = \$4175 total) stored on a central reservation system (see references to American Airlines reservations and to providing flight information. The information is stored at central reservations systems)

to determine if said conditional purchase offer is acceptable (see, for example, Abstract, and references winning bidder).

Accept said conditional purchase offer on behalf of the seller. See, for example, references to winning bidder, as in the Abstract.

Notify, the customer of acceptance of said conditional purchase offer. See, for example, references to posting and winning bids, as in Abstract.

As per claim 98, Boisseau ***does not*** specifically disclose common back office procedures such as creating a passenger name record and transmitting the PNR to a CRS.

Chung discloses creating a passenger name record; See, for example, at least Col. 10, lines 17-23. Chung also discloses transmitting a PNR to a CRS. See, for example, at least Col. 10, lines 29-43.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Cheung to disclose creating a passenger name record, Transmitting a PNR to a CRS, because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 99, Boisseau discloses accessing information on CRS for each seller in a predefined sequence. See, for example, page 5, first paragraph, "...listing the latest specials on fares to selected markets for trips ..."

As per claim 100, Boisseau does not specifically disclose that predefined sequence is based upon the historical acceptance rate of each seller. Cheung discloses historical tracking of seller acceptances, and providing the information for future presentation and selection. See, for example, Col. 1, line 40-50.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Chung to disclose that predefined sequence is based upon the historical acceptance rate of each seller because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 101, Boisseau discloses that predefined sequence is based upon seller-negotiated priorities. See, for example, page 3, ... broader trend sweeping the airline industry to lower costs through various forms of electronic ticket sales and distribution...The airlines' new distribution systems for the first time will offer the opportunity to sell its very perishable seat product...

As per claim 102, Boisseau does not specifically disclose that a predefined sequence is based upon the commission rates paid by sellers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boissue to disclose that a predefined sequence is based upon the commission rates paid by sellers because the incorporation of such features is

Art Unit: 3625

no more than the predictable use of prior art elements according to their established function.

As per claim 103, Boisseau does not specifically disclose that a CPO [a bid] includes an expiration date.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boisseau to disclose that a bid includes an expiration date, such as the date and time of departure of a flight because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 104, Boisseau discloses that seller inventory and pricing information includes seller-defined rules. See, for example, rules such as round trips to Houston for \$129.price; "...deals are heavily restricted..."

As per claim 105, Boisseau discloses that a customer accesses web page(s) because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

[...sites on the World Wide Web..."] Boisseau does not specifically disclose the use of a web browser for such access. As admitted prior art, it is old and well known to access web pages with browsers.

It would have been within the skill of one of ordinary skill in the art at the time the invention was made to access web pages using web browsers because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 106, Boisseau does not specifically disclose that a customer accesses web page which displays an electronic form containing a number of blanks to be filled out by the customer, the blanks representing conditions of the CPO. As admitted prior art, documents on the World Wide Web are structured with format codes using HTML, whose basic set of features include interactive forms that include blanks to be filled out by customers.

It would have been obvious to one of ordinary skill at the time the invention was made to include blank fields representing conditions of a CPO because incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 107, Boisseau does not specifically disclose that the financial account is a debit account. As admitted prior art, the use of debit accounts is notoriously well known.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Bossieau and general knowledge to disclose that a financial account is a debit account because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 108, Boisseau discloses that financial account is a credit account ["...customers pay with a credit card..."]

As per claim 109, Boisseau does not specifically disclose that processor is further operative to pre-authorize offer price of CPO with a financial clearinghouse. As

admitted prior art, it was well known to pre-authorize/validate proposed credit card payments with a financial clearinghouse.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau with knowledge of one of ordinary skill in the art at the time the invention was made to disclose that a processor is further operative to pre-authorize an offer price of CPO with a financial clearinghouse because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 110 Boisseau discloses that goods or services includes at least one of an airline ticket, an automobile, insurance, computer equipment and a hotel accommodation. See references to airline seats, as in Abstract.

As per claim 111, Boisseau does not specifically disclose that processor is further operative with program to obtain pre-authorization to charge financial account for travel services prior to consideration of the CPO.

Claim 113 is rejected on the same grounds as claim 98.

Claim 114 is rejected on the same grounds as claim 99.

Claim 115 is rejected on the same grounds as claim 100.

Claim 116 is rejected on the same grounds as claim 101.

Claim 117 is rejected on the same grounds as claim 102.

Claim 118 is rejected on the same grounds as Claim 103.

Claim 119 *is rejected* on the same grounds as claim 104.

Claim 120 Js rejected on the same grounds as claim 105.

Claim 121 is rejected on the same grounds as claim 106.

Claim 122 is rejected on the same grounds as claim 107.

Claim 123 is rejected on the same grounds as claim 108.

Claim 124 is rejected on the same grounds as claim 109.

Claim 125 is rejected on the same grounds as claim 111.

Claim 126 was cancelled.

Claim 127 is rejected on the same grounds as claim 98.

Claim 128 is rejected on the same grounds as claim 99.

Claim 129 is rejected on the same grounds as claim 100.

Claim 130 is rejected on the same grounds as claim 101.

Claim 131 Js rejected on the same grounds as claim 102.

Claim 132 is rejected on the same grounds as Claim 103.

Claim 133 is rejected on the same grounds as claim 104.

Claim 134 is rejected on the same grounds as claim 107.

Claim 135 is rejected on the same grounds as claim 108.

Claim 136 is rejected on the same grounds as claim 109.

Claim 137 is rejected on the same grounds as claim 111.

Claim 138 was cancelled

Claim 139 is rejected on the same grounds as claim 98.

Claim 140 is rejected on the same grounds as claim 99.

Claim 141 is rejected on the same grounds as claim 100.

Claim 142 is rejected on the same grounds as claim 101.

Claim 143 is rejected on the same grounds as claim 102.

Claim 144 is rejected on the same grounds as Claim 103.

Claim 145 is rejected on the same grounds as claim 104.

Claim 146 is rejected on the same grounds as claim 107.

Claim 147 is rejected on the same grounds as claim 108.

Claim 148 is rejected on the same grounds as claim 109.

Claim 149 is rejected on the same grounds as claim 110.

Claim 150 is rejected on the same grounds as claim 111.

Claim 151 was cancelled

Claim 152 is rejected on the same grounds as claim 98.

Claim 153 is rejected on the same grounds as claim 99.

Claim 154 is rejected on the same grounds as claim 100.

Claim 155 is rejected on the same grounds as claim 101.

Claim 156 is rejected on the same grounds as claim 102.

Claim 157 is rejected on the same grounds as Claim 103.

Claim 158 is rejected on the same grounds as claim 104.

Claim 159 is rejected on the same grounds as claim 105.

Claim 160 is rejected on the same grounds as claim 106.

Claim 161 is rejected on the same grounds as claim 107.

Claim 162 is rejected on the same grounds as claim 108.

Claim 163 is rejected on the same grounds as claim 109.

Claim 165 is rejected on the same grounds as claim 111.

Claim 166 was cancelled.

Claim 167 is rejected on the same grounds as claim 149.

Claim 168 is rejected on the same grounds as claim 98.

Claim 169 is rejected on the same grounds as claim 153.

Claim 170 is rejected on the same grounds as claim 100.

Claim 171 is rejected on the same grounds as claim 101.

Claim 172 is rejected on the same grounds as claim 102.

Claim 173 is rejected on the same grounds as claim 103.

Claim 174 is rejected on the same grounds as claim 104.

Claim 175 is rejected on the same grounds as claim 107.

Claim 176 is rejected on the same grounds as claim 108.

Claim 177 is rejected on the same grounds as claim 163.

Claim 179 is rejected on the same grounds as claim 111.

Claim 180 was cancelled.

Claim 181 is rejected on the same grounds as claim 149.

Claim 182 is rejected on the same grounds as claim 98.

Response to Arguments

Applicant's arguments filed 19 February 2008 have been fully considered.

The rejection under 35 USC 112 is withdrawn; ...*guaranteed payment*... is given its broadest reasonable interpretation to include payments made with a payment card

issued to a person with a satisfactory credit rating for making retail purchases, such as a credit card.

Applicant again argues that the Examiner has not established a prima facie case of obviousness. Again, the Examiner respectfully disagrees. The Examiner has applied the Graham rules to reject applicant's claims.

(A) the claimed invention has been considered as a whole.

(B) Boisseau and Chung have been considered as a whole and suggest the desirability and thus the obviousness of making the combination;

(C) Boisseau and Chung have been viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and

(D) There is a reasonable expectation of success.

Applicant argues that Boisseau does not discuss at least

- receiving a conditional purchase order from a customer or
- comparing a conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if the conditional purchase offer is acceptable.

In response, please see rejection under 35 USC 103, above.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

1971). Respectfully, applicant has not argued and shown that the use of debit and cards was not within the level of ordinary skill at the time the claimed invention was made. Further, applicant has not argued and shown that such knowledge is gleaned only from the applicant's disclosure.

Applicant again argues

More specifically, Applicants submit that a bid in an auction, as described in...is simply not a conditional purchase offer (CPO).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Further, the Examiner's interpretation of CPO(s) as bid(s) in auction(s) is consistent with the disclosures.

Official Notice and Traverse

A "traverse" is a denial of an opposing party's allegations of fact.¹ Applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made.

Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed

errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 706.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724,728, 169 USPQ 231,234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71,60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse official notice, the following are admitted prior art:

is old and well known to access web pages with browsers.
the use of debit accounts is notoriously well known.
documents on the World Wide Web are structured with format codes using HTML, whose basic set of features include interactive forms that include blanks to be filled out by customers.
it was well known to pre-authorize/validate proposed credit

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

¹ 1 Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

Art Unit: 3625

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/JAMES ZURITA/
Primary Examiner
Art Unit 3625
25 May 2008**

